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May 21, 2010

Federal Communications Commission
445 12th Street, SW
Washington, D.C. 20554
Via Internet Portal

**RE: Telephone Consumer Protection Act Proposal, CG Docket 02-278;
FCC 10-18**

Dear Chairman Genachowski and Commissioners Clopps, McDowell, Clyburn
and Baker:

PayPal, an online payments processor, is submitting this letter in response to the Federal Communications Commission's (FCC) request for comment on its proposed rulemaking concerning the Telephone Consumer Protection Act (TCPA). This proposal seeks to maximize consistencies with the Federal Trade Commission's (FTC) Telemarketing Sales Rule (TSR) by synchronizing the "prior express consent" required to contact customers using autodialers and/or prerecorded messages.

In asking for comments on adoption of the same requirement for both TCPA and TSR, the FCC tentatively concluded that any prior express consent requirement should apply to both provisions. PayPal respectfully submits that these two rules should not be aligned on the definition of "prior express consent of the called party".

In general, PayPal applauds making rules more consistent in an effort to enhance understanding and compliance. However, in this instance, we believe that the two rules govern sufficiently dissimilar areas that it is not appropriate to align the definition of 'prior express consent'. TCPA governs all prerecorded and autodialed calls to cell phones, among other things, while the TSR governs only prerecorded telemarketing calls.

Currently, TCPA allows businesses to presume consent when a customer provides their cell phone number to the business. This is logical as a business should be allowed to rely on the contact number provided by its customer for timely business purposes. The TCPA also allows prior express consent to be provided orally. This also makes sense in the context of the business-customer relationship which needs to remain flexible to provide the best customer service possible. However, TSR and this proposal would call for all businesses to obtain prior *written* consent specifically authorizing the placement of an autodialed or

prerecorded call to a cell phone number. This consent could not be a condition of purchasing any good or service.

PayPal believes this proposal creates significant interference with commercial relationships between a business and its customers, while providing little benefit to consumers. Businesses have instances where there is a legitimate need to contact their customers, and autodialed and/or prerecorded messages are often the most efficient way to initiate this communication. As asserted under TCPA's current definition of 'prior express consent', consumers expect to be contacted via the number they provided, regardless of whether it is a cell phone or a landline.

PayPal believes that this proposal does not acknowledge the reality of today's telecommunications and the increasing consumer preference for, and reliance on, only cell phones to conduct both personal and business matters. As of December 2009, the Department of Health and Human Services (HHS) determined that more than one in five households relies strictly on cell phones, having opted to no longer use a landline. In younger households, the number reaches nearly 50%. HHS also determined that this number is steadily increasing. (source: National Health Interview Survey.)

It therefore stands to reason that the only way for a business to contact a growing proportion of its customers is via cell phone. There are many legitimate reasons that businesses, including PayPal, need to contact their customers quickly, and these may include using prerecorded and/or autodialed calls. To put barriers up that would interfere with this relationship is not in the best interest of either the customer or the business.

One such reason that businesses, including PayPal, may reach out to consumers via autodialers and/or prerecorded messages is to determine whether transactions that appear out of the ordinary are legitimate or if fraud is occurring. Reaching out to customers via a phone call in the fastest way possible could prevent additional fraud from being perpetrated and is in the customer's best interest. Customers expect to be contacted if the business detects a potential problem, and would expect that communication to occur via the phone number they provided when they created the account, whether or not that number is for a cell phone.

Another legitimate business reason for prerecorded or autodialed calls is the timely resolution of delinquencies, which would be impeded by not allowing a business to reach a customer quickly. Many businesses, including PayPal, reach out to delinquent customers, using autodialed calls. The goal is to maximize the customer's ability to provide information to customer service agents and attempt to work out alternative payment arrangements, instead of pushing the company to pursue legal process because the company is unable to obtain information from the customer promptly. Again, Customers would typically expect a business

to try to contact them via phone prior to pursuing legal remedies, and would expect a call via the number they had provided to the business.

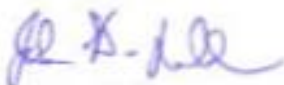
PayPal, along with other businesses, rely on the efficiency of autodialed and/or prerecorded calls to provide these important and valued customer services. Non-telemarketing communications on which customers rely may not be economically feasible if specific written consent is imposed as a prerequisite.

In addition to the efficiencies gained through autodialers and prerecorded messages, these systems protect customer information and assure privacy by eliminating dialing errors that may result in the inadvertent disclosure of information to a third party. Again, this is in everyone's best interest.

As outlined above, PayPal believes this proposal does not take into account the changing reality and trends of telecommunications used today. PayPal further believes that businesses and consumers should be allowed to interact without additional constraints. To do otherwise could increase costs that would ultimately impact consumers negatively.

PayPal thanks the FCC for consideration of its views. We appreciate your attempt to create further consistencies between regulatory requirements. We are confident that the Commission will adopt a set of rules that will not only align regulatory requirements but support important communications between consumers and businesses. As the FCC works through this process, we would be pleased to provide any additional information deemed relevant to assisting your work.

Sincerely,



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